Supreme Court, U. S.
FILED
MAY 19 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE

UNITED STATES

79-1828

ANNE M.. PAVILONIS,
Petitioner

v.

MICHAEL S.. DUKAKIS, ET AL.,
Respondents

and

JOSEPH CALIFANO, JR., SEC.,

OF

HEALTH, EDUCATION and WELFARE,
Respondent

WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF

APPEALS

FOR THE FIRST CIRCUIT

Anne M. Pavilonis

292 Park Street

Boston, Ma.02132

May 15, 1980

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Petition for a Writ of Certiorari
to the Supreme Court of the
United States

The appellant petitions for a writ of certiorari to review the opinion, as modified, and the Orders of the Court of Appeals for the First Circuit entered in this case on March 12, 1980, and May 7, 1980.

OPINION BELOW

The Order of Court entered March 12, 1980. (Appendix A ) Order of the Court entered December 12, 1978. (Appendix B) The Order of the Court as modified entered June 9, 1978. (Appendix C) Order of the District Court as modified entered September 11, 1979. (Appendix D) Order of the District Court entered April 12, 1978. (Appendix E) Order of the Court of Appeals entered May 7, 1980. (Appendix F) Memorandum and Order of the District Court

entered February 8, 1980. (Appendix G) Motion to the Chief Judge filed May 6,1980. (Appendix H)

## JURISDICTION

The initial opinion of the United States Court of Appeals for the First Circuit was entered June 9, 1978. The Court's Order denying a hearing and modifying the initial Order was entered December 12, 1978 The Court's Order denying the appellant's motion to recuse was entered March 12, 1980.

The District Court entered a Memorandum and Order dated February 8, 1980,dismissing the Complaint. The Court of Appeals Order denying the motion to recuse entered May 7, 1980

The jurisdiction of this court is invoked under 28 U.S.C.. Section 1254 (1).

## QUESTIONS PRESENTED

The question of denying the pro se pleader procedural due process is presented.

When the United States Court of Appeals denied the pro se pleader procedural due process on Appeal of an Interlocutory Order may the Court deny a motion to recuse for the appeal of the final order?

May the United States District Court issue an order denying the pro se pleader procedural due process?

May the District Court issue an Order that usurps the prerogative of another District Court to conduct its business in a timely and orderly manner?

CONSTITUTIONAL PROVISIONS INVOLVED

P.L. 93-512; 88 Stat 1609 (a) page 6355 specifies in pertinent part, "---The issue of disqualification is a sensitive question of assessing all the facts and circumstances in order to determine whether the failure to disqualify was an abuse of sound judicial discretion.---"

28 USCS 455 (a) in pertinent part."--- any justice, judge, or magistrate

of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

Pierce v. Society of Sisters 268 U.S. 515 pertinent part, "---were rules are completely adequate, prohibition is unnecessary and constitutes mere arbitrariness and wanton use of power."

STATEMENT OF THE CASE

The petitioner found the federal education funds provided by grant are administered in a discriminatory manner, based upon race; and the state's support program is infected with the same discriminatory environment.

Having exhausted all administrative procedures and unable to obtain accordant counsel the petitioner entered Complaints, pro se, in the United States District Court pursuant to the Federal Rules of Civil Procedure, 28 USCA 8a (1), 54c, addressing the federal and state liabilities. Related

cases are: CA-77-3304-C, 79 U.S. 42 cert. denied; CA-78-205-C; CA-77-3745-T; CA-77-3839-T.

The petitioner's motion for court appointed counsel was denied; the District Court then issued an Interlocutory Order of April 12, 1978, permanently enjoining the petitioner from filing, commencing, or instituting any lawsuit against any defendant. The petitioner entered a Notice of Appeal from this Order on two separate occasions. The appeals were neither docketed nor procedural due process allowed.

This irregular procedure by the Appellate Court allowed the District Court's Order to remain in effect, thus, denying procedural due process in the District Court of Judge Tauro and usurping the prerogative of other District Courts to conduct their business in a timely and orderly manner. All motions to file entered in

Judge Tauro's Court so far have been either denied or ignored, thus, obstructing due process. The related case CA-78-205-C is dismissed without benefit of a hearing. Appeal No. 80-1228.

Upon appeal of the District Court's final Order the petitioner entered a motion asking the Court of Appeals to recuse pursuant to 28 USCA 455 (a). The Order of the Court entered March 12, 1980, denied the motion in Appeal NO. 79-1614; an Order of May 7, 1980, denied the similar motion in Appeal NO. 80-1228. The petitioner now brings the question of prohibiting the pro se pleader to this Court.

Federal jurisdiction may be found at 5 USCA Ch. 7, Section 706 (22); 28 USCA Rule 8a(1), 54c; 42 USCA Section 2000d-1 (9).

REASONS FOR GRANTING THE WRIT

The Court of Appeals has so far

departed from the accepted and usual course of judicial proceedings; and so far sanctioned such a departure by a lower Court, as to call for an exercise of this court's power of supervision.

The basic question raised in the cases, the constitutionality of race-conscious allocation of education funds is of national importance as it impacts on every child in public education.

The Massachusetts statues, Chapter 636 and Chapter 622, respectively, and their corresponding regulations called into question by the complaint are the very bases for the non-compliance with the United States District Court's-Garrity, J. desegregation orders relevant to school geocode, District/University pairing, instructional services and materials. The Court's commitment to a unitary school system and the

petitioner's relief is timely.

The petitioner contends the lower Court's prohibitions take away a most substantial part of the liberty and freedom of a parent, the right to guide one's children intellectually by providing for her children the free appropriate education gauranteed in the Constitution. The question is urgent.

## CONCLUSION

The basic issue raised by this Appeal, the constitutionality of denying the pro se pleader procedural due process is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court. The petition for writ of certiorari should be granted.

## PRAYER

WHEREFORE, the petitoner prays this court will grant:

1. The writ of certiorari;
2. Enter a decree vacating the District Court's Order of April 12, 1978, and September 11, 1979;
3. Enter a mandate to the lower court allowing the petitioner to change jurisdiction of the issues by intervention in the desegregation case presently before the District Court of Judge Garrity;
4. Enter a decree vacating the Order of February 8, 1980, and mandate a hearing be allowed the petitioner;
5. That this Court make such further order as it may deem just and proper.

By Its Attorney, pro se

Anne M. Pavilonis

Anne M. Pavilonis
292 Park Street
Boston, Ma. 02132

"A"

UNITED STATESCOURT OF APPEALS
FOR THE FIRST CIRCUIT

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NO.. 79-1614.

ANNE M.. PAVILONIS,
Plaintiff, Appellant,

v.

MICHAEL S. DUKAKIS, ET AL.,
Defendant, Appellee.

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ORDER OF COURT
Entered March 12, 1980

Appellant's motion for the disqualification of "Massachusetts Appellate Judges" is denied. While the Court would not hesitate to grant such a motion were there a reasonable appearance or possibility of bias, appellant offers no reasons which would suffice as a basis for disqualification. See 28 U.S.C. Sec. 455. Appellant's motion for an extension of the time for out of state judges is also denied

By the Court

"B"

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 80-1228

ANNE M. PAVILONIS,
Plaintiff, Appellant,

v.

SECRETARY OF HEALTH, EDUCATION AND WELFARE,
Defendant, Appellee

ORDER OF COURT
Entered May 7, 1980

Upon consideration of appellant's "Motion to the Chief Judge" and no sufficient showing having been made,

It is ordered that said motion of appellent is hereby denied.

By the Court:

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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Misc. No. 78-8132

ANNE M. PAVILONIS,

V.

MICHAEL S. DUKAKIS, ET AL.,

(U.S.D.C., Mass., CA No. 77-3745-T and CA No. 77-3839-T)

---

ORDER OF COURT
Entered December 12, 1978

Since a final decision and judgement has not yet been rendered by the district court in these lawsuits, the appeals have been taken prematurely. 28 USC Sec. 1291; 9 Moore's Federal Practice (s 110.06 and 110.07 (2nd ed. 1975). Therefore, these appeals are hereby dismissed for lack of appellate jurisdiction.

By the Court:

"D"

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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Misc. No. 78-8059.

ANNE M. PAVILONIS,
Plaintiff, Appellant,
v.
KENNETH G. RYDER, ET AL.,
Defendants, Appellees.

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ORDER OF COURT
Entered: June 9, 1978

Since it "clearly appear(s) that no substantial question is presented" by this appeal, we summarily affirm the judgement of the district court. First Circuit Rule 12. Pro se civil rights complaints are to be liberally construed. Haines v. Kerner, 404 U.S. 519, 520-21 (1972). Nonetheless, they must contain more than mere conclusory statements and a prayer for relief to survive a motion to dismiss. Appellant's complaint is so vague and conclusory that it fails to meet the minimum standards upon which a claim of denial of constitutional rights must rest. Kadar Corp.

v. Milbury, 549 F.2d 230, 233 (1st Cir. 1977); Anderson v. Sixth Circuit District Court, 521 F.2d 420, 420-421 (8th Cir. 1975); cf. Slotnick v. Staviskey, 560 F. 2d 31 33 (1st Cir. 1977).

Therefore, we find that the district court acted properly in dismissing the complaint.

By the Court:

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

| | | |
|---|---|---|
| ANNE M. PAVILONIS | * | CA 77-3839-T |
| | * | |
| | * | CA 77-3745-T |
| v. | * | |
| | * | |
| MICHAEL S. DUKAKIS, ET AL | * | |
| | * | |

ORDER

TAURO, D.J.. September 11, 1979

The court having approved the Magistrate's recommendation dated March 9, 1978, in an order dated April 12, 1978, and in that same order having ordered that no further papers be filed for the plaintiff, it is ORDERED that this complaint be dismissed.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANNE M. PAVILONIS, Plaintiff
CA 77-3839-T #14
CA 77-3745-T #09

V.

MICHAEL S. DUKAKIS ET AL
Defendants

ORDER

April 12, 1978

TAURO, D.J.

The Court having approved the Magistrate's recommendation dated March 9, 1978,

IT IS ORDERED that plaintiff ANNE M. PAVILONIS is hereby permanently enjoined and restrained from filing, commencing or instituting any lawsuit against any defendant in this Court without order of a Judge of this Court authorizing such filing, and

IS IS FURTHER ORDERED that the Clerk of this Court not accept for filing any further papers submitted by plaintiff Anne M. Pavilonis without order of a Judge of this Court authorizing such filing.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANNE M. PAVILONIS,
Plaintiff,

CIVIL ACTION
No. 78-205-C

V.

JOSEPH CALIFANO, JR., SEC.
of Health, Education and
Welfare,
Defendant

MEMORANDUM AND ORDER
February 8, 1980

CAFFREY, CH. J.

On February 6, 1978, an order was entered herein conditionally dismissing this case 30 days after February 6, 1978 unless within that time period plaintiff filed an amended complaint complying with the Federal Rules of Civil Procedure.

A routine review of the docket and file of this case establishes that although plaintiff filed a purported amendment on February 28, 1978 that document failed to add anything to the previously filed complaint. Accordingly, it is ORDERED:

The conditional dismissal referred to

in the Memorandum and Order filed February 6, 1978 is made absolute. Plaintiff's complaint is dismissed.

Andrew A. Caffrey Ch. J.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

ANNE M. PAVILONIS, NO. 80-1228
Appellant

v.

JOSEPH CALIFANO, Jr., Sec.,
of Health, Education and
Welfare
Appellee

MOTION to the Chief Judge

The appellant respectfully motions the Court to recuse pursuant to 28 USCS Sec. 455 (a). The Court of Appeals has shown partiality toward the District Court whose Order of April 12, 1978 and September 11, 1979, respectively, are being challenged in a related appeal, NO. 79-1614.

WHEREFORE, the appellant prays the Court will allow her motion and recuse as the issue is grave and of national importance.

By Its Attorney, pro se